
The NEW NONCONFORMIST;

OR,

Dr. SHERLOCK's

C A S E

Fairly Stated and Examined.

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THE
NEW NONCONFORMIST:
OR,
Dr. SHERLOCK's CASE
IN
PREACHING
AFTER A
DEPRIVATION

Incurr'd by the Express Words of a Statute:

Fairly Stated and Examined.

With short Reflections upon Mr. Coak's Sermon, Feb.
2. 1692. which was Licens'd by the Arch-Bishop's
Chaplain.

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THE
New Nonconformist:
OR,
Dr. SHERLOCK's CASE
In Preaching after
DEPRIVATION
Incur'd by the Express Words of a Statute:
Fairly Stated and Examined.



R. Sherlock, who was at the time of the Act, for the Abrogating of the Oaths of Supremacy and Allegiance, and appointing other Oaths, Master of the Temple, Rector of one Parish Church in the City of London, and Lecturer of another, neglected or refused to take the Oath of Allegiance to King WILLIAM and Queen MARY, and the Oath of Supremacy, as is required

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quired by that Act, of all Persons then having any Ecclesiastical Dignity, Benefice, or Promotion: Under the Penalty of Suspension from the Execution of his or their Office, for neglect or refusal, till the first of August, 1689. for six Months, to be reckoned from the said first of August, and of being Deprived of his and their Offices, Benefices, Dignities, and Promotions Ecclesiastical, for such neglect or refusal, till the end of those six Months.

He discontinued Preaching from the said first of August, to the Second of February, 1689. being the first Sunday after a Prorogation of the Parliament, which enjoyned the Oaths; then he began again to Preach, and Prefac'd his Sermon with a Declaration, That he did it with the Permission of his Superiors, and the Advice of some of the most Eminent Lawyers.

Before I particularly consider the Merits of the Case, for the better understanding the weight both of the Permission and Advice: It may be material to ask,

1. Whether the Permission of Superiors, were more than a Not forbidding the Doctor to Preach, if he might by Law?

2. Whether if any Superior permitted positively, he were not one, who himself stands depriv'd by the Words of that Act?

3. Whe-

3. Whether any Permission of Superiors can avail without such a Dispensing Power, as themselves have denied?

4. Whether if the *Prorogation* were not the sole Reason of the Opinions of the *Lawyers*, they would not have advised the Doctor to Preach while the *Parliament* was Sitting? The *Suspension* to which he submitted, having upon more plain Resolutions in Law, than they can produce for their Opinions, expired at the end of six Months, from the First of *August*; reckoning four Weeks, or eight and twenty Days to a Month.

5. Whether, if prudential Considerations warranted the Doctor's forbearing the Exercise of his *Ministry* while the *Parliament* was Sitting, Prudence in regard to the *PUBLICK PEACE*, ought not much rather to have occasioned a forbearance upon the *Prorogation*?

6. Whether the *Lawyers*, who gave the Doctor the Advice, which he followed, were not such as to the last oppos'd our present Settlement, upon Supposition that this *King* ought to have been but a *Regent*, or Administrator of Affairs under the Late *King*: And by consequence, That neither the present Settlement, nor any other Transactions of this *Parliament* were regular or just?

7. Whether

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7. Whether this notwithstanding, some of the *Lawyers* whom the Doctor consulted, had not themselves taken the new Oaths, after having Sworn Allegiance to the Late King? And therefore, whether the Doctor did not upon that account either think them to have been Perjur'd, or of Judgments not to be relied on in such a Point of Law?

If according to the Popish Doctrine of Probability, the Opinion of so many *Lawyers* might warrant the Doctor's Acting accordingly; why would not their Opinions and Practice as well prevail upon him to take the Oaths, as being according to the Laws of this Government, which they are presum'd to have Studi'd more than he has done?

If it be said, That to take the Oaths, is against his Conscience, but to Preach is not. That signifies nothing here. The Question being only, Of the Validity and Weight of the Opinions.

8. Whether one of the *Lawyers* had not been made a Judge, for Signing an Opinion for the Legality of a Standing Army in the time of Peace; and declaring, That a Person under a *Parliamentary Impeachment*, might be Tryed in the King's Bench? And whether he did not venture upon such a Tryal, tho' it was admitted in the Pleadings, that the Impeachment was lodg'd in the Supreme Court of Judicature?

And

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And whether he did not give sufficient Proof of his Skill, in saving a Foreign Count, which might have been more commendably employ'd in helping an English Great Man, who at least deserv'd Justice, and that the Law on his side should have been declared as plainly, as it had been when the Lord Shaftesbury was Tryed at the Old Bailey.

9. Whether another Lawyer's Opinion may not be thought more an effect of Revenge for a Publick Mark set upon him in that Parliament, than of Judgment? Or, Whether, however, any thing but his Place and Countenance ever gave value to his Judgment?

10. Whether another of the Lawyers had not maintained, in order to take away Mens Lives, "That Scribere est agere, Writing is an Oven-act" of Treason, within the 25 of E. 3?

That though, in the Judgment of several Parliaments, it has been found needful to have temporary Laws, to make Words spoken or written Overt-acts of Treason, yet no man ever doubted but words alone may be Acts of Treason within 25 E. 3.

That, how manifest soever the distinction of kinds of Treason be, within the Statute; whatever the Opinion of the Lord Coke, or the Case of the late, or any former Revolution; yet no man ever doubted but a Conspiracy to Levy War

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War, is a Conspiracy against the Life of the King,
within that Act.

That the Meeting where the Levying War was discours'd of, without Proof of the Party's knowing the end of the Meeting ; and a bare Agreement in others of the Company to seize Guards not Established by Law, were Obett-acts within that Statute , in a Person against whom no Words or Deeds were prov'd, expressing his Consent to any such Matter.

13 Car. 2. c. 1. And, to crown the whole, That, notwithstanding
the express Provision of the Statute 13 Car.
2. That no person shall incur any of the Pe-
nalties mentioned in that Act, unless he be pro-
secuted *within Six Months*, and Indicted within
Three, after such Prosecution; yet a Man
might have been lawfully Prosecuted for Tre-
ason, within that Act, *after the six Months.*

To come more particularly to the Question, it will be requisite to lay before the Reader,

**Part of the respective Forms of the Ordination
of *Diocesis* and *Priests*.**

II. The disabling Clause in the Statute of the Queen, enjoining the Oath of Supremacy.

**III. So much of the Act of Uniformity as looks
that may be set aside.**

IV. And

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IV. And then so much of the last Act, for the Oaths, as concerns the present case.

I. The Form of Ordaining a Deacon, has these words :

Take thou Authority to Read the Gospel in the Church of God, and to Preach the same, if thou be thereto Licensed by the Bishop himself.

The Form of Ordaining a Priest, has these words :

Take thou Authority to Preach the Word of God, and to Minister the Holy Sacraments in the Congregation, where thou shalt be lawfully appointed thereunto.

2. The Statute 1 Eliz. has this Clause :

If any Arch-bishop, Bishop, or other Ecclesiastical Officer or Minister, shall peremptorily or obstinately refuse to take or receive the said Oath, he shall forfeit and lose only during his Life, all and every Ecclesiastical and Spiritual Promotion, Benefice, and other Office, and the whole Title, and Interest, and Incumbency, in every such

1 Eliz. c. 1.

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Promotion, Benefice, and other Office, as against such Person only, so refusing, during his Life, shall clearly cease, and be void, as tho the Party so refusing, were dead.

3. The Act for Uniformity 14 Car. 2. provides,

14 Car. 2.c. 14.

That every Parson, Vicar, or other Minister whatsoever, who at that time had and enjoyed any Ecclesiastical Benefice or Promotion, within this Realm of England, or Places there mentioned, shall do as is thereby appointed, before the Feast of St. Bartholomew, 1662. upon pain that all and every such Person who shall (without lawful Impediment, to be allowed and approved of, by the Ordinary of the Place) neglect or refuse to do the same within the time aforesaid, or within a Month after the Impediment remov'd, shall ipso facto, be Depriv'd of all his Spiritual Promotions. And that Persons after that time to be put into any Ecclesiastical Benefice or Promotion, shall do as is thereby required, within Two Months next after he shall be in Actual Possession of the said Benefice or Promotion, upon the same Penalty.

It also provides, That Persons not Episcopally Ordained, shall be utterly disabled, and ipso facto Depriv'd of Parsonages, Vicarages,

Curacies, Benefices with Cure, or other Ecclesiastical Promotion.

And farther, That no person shall be suffered to Preach as Lecturer, or to Preach or Read any Sermon or Lecture, unless he be Licensed by the Archbishop, or Guardian of the Spiritualties; and in the presence of the Archbishop, or Guardian, read the Nine and Thirty Articles, with a Declaration of his unsiegnd Assent and Consent to the same.

And that every person who then was, or after that should be Licensed, the first time he preaches, before his Sermon, shall openly, publickly, and solemnly read the Common Prayer to be read for that time of the day; And then and there publickly and openly declare his Assent unto, and Approbation of the said Book, and to the Use of the Prayers, Rites and Ceremonies, Forms and Orders therein contained and prescribed. And if he neglect or refuse to do the same, shall from thenceforth be disabled to Preach the said, or any other Lecture or Sermon, in the said, or any other Church, Chappel, or any other Place of Publick Worship, till he do as aforesaid.

And if he Preach during such Disability, shall suffer three Monthes Imprisonment without Bail or Mainprise.

4. That

W. & M.

4. The Act for Abrogating the Oaths of Supremacy and Allegiance, and appointing other Oaths, Provides, That all Persons (other than such concerning whom other Provision shall be made in that Act, or in any other Act of that Session of Parliament) that shall after that time be admitted into any Office or Employment Ecclesiastical, or Civil, or come into any Capacity, in respect, or by reason whereof they should have been obliged to take the Abrogated Oaths of Allegiance and Supremacy, shall upon neglect or refusal of the new Oaths incur, and be liable to the Penalties, Forfeitures, Disabilities, and Incapacities, as by any other Statute was appointed for, or upon Neglect, or Refusal.

This Clause related only to them, who should come into Offices after the making the Statute. Another provides for such as then enjoyed any Ecclesiastical Offices; in these Words,

And be it further Enacted by the Authority aforesaid, That if any Arch-Bishop, or Bishop, or any other Person, now having any Ecclesiastical Dignity, Benefice, or Promotion, shall neglect or refuse to take the Oaths by this Act appointed to be taken in such manner as by this Act is directed, before the first Day

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Day of August, in the Year 1689, every such Person and Persons so neglecting or refusing, shall be, and is, and are hereby Declared, and Adjudged to be suspended from the Execution of his, or their Office, by the space of six Months, to be accounted from the said first Day of August. And if the said Person, or Persons, (so having neglected or refused) shall not within the space of Six Months take the said Oaths, in such manner, Court or Place, as they ought to have taken the same before the said first Day of August, Then he or they shall be ipso facto, Deprived; andis, and are hereby adjudged to be Deprived of his or their Offices, Benefices, Dignities, and Promotions Ecclesiastical.

I conceive it will appear upon Consideration of the Forms of Ordination, the several Clauses of the abovementioned Statutes, and the Circumstances of the Case and Person,

That if the Doctor were not within the Statute *i. w. & M.* barely upon the Account of his Lecture, yet that he was so beyond Dispute, as he had a *Dignity* and *Benefice Ecclesiastical*; being at the making of the Act, *Master of the Temple*, and *Rector of a Parish-Church.*

2. The Suspension was not only in its own Nature, but of the Doctor's admitting, a Suspension

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sion from the Exercise of his Function or Office of a Minister; otherwise he was guilty of a notorious neglect of his Duty, in not Preaching anywhere during the time of the Suspension.

3. The Deprivation is as extensive as the Suspension was; the only difference being in the propriety of expression; it not being proper to say that a Man is Deprived of the Execution of an Office, though he may well be said to be Deprived of the Capacity to execute; which is the Office, and to be suspended from the Execution: But a total Incapacity or Disability to Execute, naturally and legally follows a Deprivation from the Office.

The Refusal till the first of August, is agreed for Six Months to suspend the Execution of the Office, that is, for so long to forbid Preaching, as an Exercise of the Office. But is it to be supposed, That in the Intention of the Law-makers, an obstinate refusal, after the time given them to consider, shall affect the Execution of the Office less than a refusal before it may be thought obstinate? Or, indeed, Can a Man be said legally to execute an Office of which the Law has Deprived him?

If a Deprivation follows a Suspension, what is that at the first view, but a total Discharge from the Execution? whereas the Suspension was but a temporary one.

The

4. If we have recourse to the *Canon Law*, a deprivation is ordinarily but the same with perpetual or indefinite Suspension; and therefore where the *Canon Law* wholly forbids those, who fall after Ordination, to Administer the Sacra-
ments, the *Gloss* says it is proved by Examples and Authorities, that after Repentance, they may
*proprios gradus administrare, & ad maiores conser-
dere*, "execute what belongs to their proper
"Orders, and rise to higher. A perpetual Suspen-
sion from the Office alone, is a Suspension from
the Benefice which is given for the Office; and
as 'tis held by *Linwood*, though it be Temporary,
if it be for a great cause, it implies a Suspension
from the Benefice; and whatever be the Cause,
and whether à *Canone*, from the words of the Law,
or *ab homine*, the Sentence of a proper Judg, if
he who is publickly denounced suspended *immi-
scat se divinis*, "Preach or the like, before the
Suspension is taken off, he becomes irregular, that is,
is depriv'd of his Order; and he who is irregular is
elsewhere said to be suspended *ab offici executione*,
"From the Execution of his Office. To say
that he who is suspended, if he act as a Min-
ister, during the Suspension, shall be suspended,
seems a Bull: but in truth is, he who acts during
a Temporary Suspension shall incur a perpetual
or indefinite one, that is, be deprived. Where-
fore though the Doctor's six Months Suspension
is determined, his deprivation or indefinite
suspension taking place, the Execution of
the Office is still restrain'd, and even by

C

*Corpus Iuris
Canon. p. 162.*

*Linwood lib.
I. cap de Con-
stitutionibus.*

*Linwood de
temp. ordinande
fol. 47.*

the Canon Law he becomes *irregular* for Preaching while he lies under this Restraint.

5. The word *Offices* in the Statute, is used either in relation to several Persons respectively, or rather is intended to take in the several *Offices*, or *Orders* of Churchmen which any Person *Dignified*, *Beneficed*, or *Promoted* may be of, as *Bishop*, and *Priest* or *Presbyter*, *Presbyter* and *Deacon*, or all three, if they are so many distinct *Orders*, as some contend.

All agree that an *Order* in the Church is a *capacity* to some peculiar *Act*; every such capacity is a distinct *Office*; and *vice versa*, every distinct *Office* is a capacity to a peculiar *Act*. Whatever totally or indefinitely suspends the *Capacity*, equally suspends or affects the *Office*, and by Consequence the *Order*: And whatever totally suspends or deprives from the *Office* or *Order*, equally restrains the *Capacity* to Execute.

No Man doubts but there may be two *Orders* at least, whoever has either of them has an *Office*, and whatever *Office* any Clergyman had in the *Church* at the making the *Act*, he is deprived, that is totally and indefinitely suspended from the *Execution* of it, unless he have qualified himself as the *Act* requires.

6. That

6. That by *Offices* in the Act, *Orders* or *Funiti-*
ons are particularly intended, and not *Places* or
Preferments, appears not only in that *Offices* are
express before and besides them; but whereas
the Persons at the time of the Act subject to
deprivation, are only such as then had *Dignities*,
Benefices, and *Promotions Ecclesiastical*, the Pen-
alty is made to extend to the *Offices* as well as to
the *Dignities*, *Benefices*, and *Promotions*.

7. No Man can doubt but the Penalty in relation
to such as at that time were *Dignified*, *Be-*
neficed, or *Promoted*, was designed by the Law-
makers to extend as far as the Penalties upon
them who should after that time be admitted
into any *Office* or *Employment Ecclesiasti-*
cal.

Nay there would seem to be greater need of
Caution against them who were in *Office* then,
and might have the pretence of being required
to take contrary Oaths now; than against them
who were to come in *de novo*, and after the Go-
vernment had been longer settled. But it ap-
pears by the continuance of the Penalties in the
Statute 1. Eliz. against such as being after that
time admitted into any office or employment Eccle-
siastical, shall neglect or refuse to take the new
Oaths, that every such neglecter or refuser is
adjudged to forfeit and lose his office. And that all
his Title, Interest, and *incumbency*, shall cease and be
void as much as if he were dead.

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And in such Case I am sure there can be no exercise of any Functions.

*Linwood de
Constitutioni-
bus sup.*

8. That I am not mistaken in supposing that Office reaches the Order, is very plain by the Canon Law. Linwood says, where a Man incurs a Temporary suspension for a Crime; if he repent within the time, the Suspension *non impedit ordinis Executionem*, " Does not hinder the Execution of the Order. And speaking of a Bishop suspended, says, Some things belong to the Order, some to Jurisdiction; and that he who is suspended from the Office, cannot do what belongs to the Office, Administer the Sacraments, or the like; but is not restrain'd from Matters of Jurisdiction, where order and office are manifestly the same: and speaking of irregularity denounced by a Law against one, *qui immiscat se divinis, Acta in the Ministry during a Suspension*, says, *Satis offendit si faciat de mente conscientis, quod efficit suspensus ab officio ordinis.* It is plainly enough the mind of the Lawmaker, that he should be suspended from the office of his Order.

*Corpus Juri
Canon. de Cri-
minibus c. 16.*

The Canon Law provides, That every Bishop, Presbyter, or Deacon, that takes or keeps a Woman, shall be deprived from his Office and Benefit: which is there explain'd by *Proprio gradu decedat usque dum ad satisfactionem ventur*, he shall be de-

*So ib. p. 170.
Hi qui depre-
benxi vel capti-
fuerint publice
in perjuro, farto atque Fornicacione, &c oteris hujusmodi criminibus, secundum Canonum Six-
terorum instituta, a proprio gradu decedant.*

graded,

graded, or fall from his proper Order till he give satisfaction, that is by penitence.

And in the Contents of the Fourteenth Chapter of Crimes, tis Clerici post Capitum in sua Ordinatione reputari possunt. Clerks after a Fall, or after Penitence, as in the Fifteenth, may be reputed to be in their proper Orders.

This Deprivation or Degradation therefore being, as is before shew'd more at large, but an indefinite Suspension, it removes the great offence which the Clergy may take at Statutes depriving them of their Office, or incapacitating them for discharge of their Function.

vid. Godolphin's
Repertorium
Canon. p. 306.

9. That Reformation of the Ecclesiastical Laws, which was composed by Two and thirty Divines, Civilians, and others, 6 E. 6. calls Deprivation *Dejetatio de dignitate*, a Dejection, or Degradation from the Dignity. Wherefore if the Word Offices would not take in the Orders in the Church, at least the Ecclesiastical Dignity express in the Statute does. Wherefore he who does not take the Oaths thereby required, being adjudged deprived of his Ecclesiastical Dignities; this, as that Reformation speaks of the Sentence of Deprivation, is *Horribile velum in sanctum ordinem quicunq;* *et unque personarum Ecclesiasticarum missum*: "A dreadful Dart thrown at the Holy Order or Function of all sorts of Ecclesiastical Persons.

Reformatio le-
gum ecclesiast.
ex autoritate
primum Regis
H. 8. inchoate.
De deprivati-
one cap. 1.

* Ib. cap. 4.

Andi

And that the *Act* takes *Dignity* in the same Sense that the Reformers of the Ecclesiastical Laws did, appears, in that otherwise it would be defective, and no sufficient Remedy against the Mischief which it manifestly intends to prevent: and a bare *Lecturer* having no *Benefice*, would not be within the *Act*, unless his place were within the Word *Promotion*. But it is much rather to be thought, that his Order of *Priest*, or *Deacon*, is a *Dignity*, than that a *Lecturer's* Place is a *Promotion*. And if they, who at the time of the *Act*, were only *Lecturers*, might have liberty of preaching, though they are of another Allegiance, they may instil as much Sedition, and yet receive as much Profit under that Government which they oppose and weaken to their Power, as those who are *Beneficed*.

10. Preaching being a Faculty belonging to an Ecclesiastical *Office* or *Order* in the Church, the Doctor is bound to be silent, unless it be granted that *Laymen* may preach the Gospel.

If it be said that he has a *Bishop's Licence* since the *Deprivation*; that is not to be presumed; for either the Deprivation was as full as a Deprivation in the Ecclesiastical Court, *ab officio & beneficio*, or it was not; if it was as full, I hope he will not lay that he might preach, especially in the same Diocese where he was deprived, till he were

were formally restor'd by his Ordinary, or at least had testified his Repentance: If it were not as full, then certainly they who thought themselves obliged to degrade or deprive one of their Brethren, by reason of an Indictment transmitted to them from the Kings Bench; and that where the Offence, if any, was not within their Canons, and only against one who stood next in Succession to the Crown, ought to proceed to a formal Deprivation of one whom they are by a known Law bound to deprive, if he be not already deprived, for refusing to swear Allegiance to a King and Queen in Possession. And since he preaches, as it were, in defiance of the Act, they may seem more particularly obliged to vindicate the Honour of the Law, at least to tender him the Oath of Supremacy according to the Power given the Ordinary by the Stat. 5 Eliz. and which the late Statute obliges him to execute. Upon the refusal of which the Office would cease as much as if the Doctor were dead.

Nor could he reasonably complain of this, he having been one of them who degraded or deprived Mr. Johnson; upon which they have seemed to think him a meer Layman.

If the Dr. preach as licens'd since his Deprivation, he ought, according to the Statute 14 Car. 2. before his being licensed *de novo* to have read the Nine and thirty Articles, with Declaration of his *unfeigned assent and consent to them*; and the first time

time that he preach after such Licence to have read the Common Prayer, and publickly and openly to have declared his assent and consent unto, and approbation of the Book of Common Prayer, and that as altered with the Names of our present King and Queen inserted.

If the Doctor may preach notwithstanding the Deprivation from his Offices, much rather might the *Dissenting Ministers*, who were turn'd out by the *Bartholomew Act*; though that Act disables and deprives them of their Benefices and Promotions, and makes it penal for them to preach, unless they qualifie themselves as the Act requires: yet it no where totally deprives them of their Office, the power of administering the Sacraments at least remain'd: And there might be some Colour for arguing that the Office could not be divided, and that the Office remaining with some part of the exercise of it untouched, might draw to it the other incidents, especially in them who did not receive a qualified Authority to preach the Gospel.

If therefore it be said there was a Penalty annex'd to preaching after Disability, but here is none to preaching after Deprivation; that rather shews that the Suffering the Penalty answers the Law, than that the Penalty confirms the disability. But if any argue from hence, that the Law which deprives of the Offices, has no Sanction for want of a Penalty; it is to be considered, that

that the *Deprivation* is its self a Penalty, and besides, the Common Law provides for instituting and punishing them who usurp Offices, and who act against the Prohibition of Statutes.

12. If the Doctor will preach as a *Dissenting Minister*, he may consider, that even before the Toleration, those of them who were not Episcopally ordained, might as well as he have preach'd in Lectures, if they would have qualified themselves by a Conformity to the Act 14 C. 2. And yet if the Doctor will preach either as a *Pretender to Holy Orders*, or a *Gifted Layman*, he is bound by the late Act to give regular notices where he will hold his *Conventicle*, nor can be exempted from former Penalties against ~~Conversaries~~, unless he take the Oaths which he has refused; or if he scruple all Oaths, solemnly profess and declare, that he will be true and faithful to King William and Queen Mary, and profess Faith in God, and in Jesus Christ his eternal Son, the true God, and the Holy Spirit, one God blessed for evermore, &c.

Act for Toleration, 1 W.M.

13. It appears by the Form of Ordaining a *Deacon*, That he is not to preach as such, unless licensed by the Bishop; and by that of a *Priest*, That he is not to preach in that capacity, but where he is lawfully appointed therunto. Whereby it appears, that the Authority to preach the Gospel is not given out *Divines* absolutely, but *sub modo*, either as there is a legal Licence remaining in force, or a *lawful Appointment* to a place.

D

But

od this visiting is not an unprovided office
But if the Bishop license one who stands
deprived, and the Deprivation, as I have shown,
reaches the Office or Order, what is that but a
dispensing with the Law? And how can a Man
be lawfully appointed to preach, who is by Law
disabled? The same Law which appoints the
Form of the Ordination, adds the qualification
at the time. And every conforming Minister de-
clares his assent unto and approbation of the quali-
fication or restraint of the Authority to preach,
viz. His licensed or lawfully appointed. By the
same reason that the Orders or Offices are subject
to such a Qualification, they are subject to o-
thers from the like Authority. And whatever
Clergyman of our Church denies the Power of
this Act to deprive him of his Office, condemns
that very Ordinance, by which he received
Authority to preach the Gospel, and renounces
the assent and approbation, which he had solemnly
given.

14. It must not be denied but the Words of a
Statute Law may work a Deprivation without
a Sentence in the Ecclesiastical Court. Godolphin
agrees, that Deprivation may be either by a par-
ticular Sentence in the Spiritual Courts, or by a Ge-
neral Sentence by some Positive or Statute Law of the
King; wherefore he but transcribes the Learned
Dederidge; indeed that Learned Man speaks of
Cases, wherein the Law ordigneth not the Church
actually void without a Sentence of Deprivation; yet Sta-

*Godelp. Rep.
Can. p. 306.*

*Dideridge
Compleat Par-
son p. 72.*

Statutes may make Churches void ^{not in fact},
which before those Statutes were but voidable by ^{1 Inst. f. 120.}
deprivation, as particularly has been adjudged ^{6 Rep. Green's}
upon the 12 and 21 of Eliz., and it was held ^{c. Crook, Eliz.}
for a Rule in arguing a Case upon 13 Eliz., ^{Baker and}
which deprives for Symony. That where ^{Marsh's resp.}
due makes these void, is to be proved according to ^{17. Car. 1. p.}
the Words of the Statute, not if there shall be ^{87. Rous. n.}
malice or prejudice to him for whom the Statute was
made. ^{Wright.}

1015. The Question therefore being, whether
the Statute does disable from the execution of
the Office, and deprive as much as a Civil Law
can? It is to be observed, that it is not only
enacted, that such persons shall be ^{not to be} facte de-
prived: In which case notwithstanding the reso-
lutions in our Law, some will think there is need
of a future Deprivation by Ecclesiastical Superi-
ors, but they are adjudged to be deprived actually:
So that here is a Judgment of Parliament, where
every Man's consent is involved, and that of all
the Bishops particularly included or implied,
importing as much as a Sentence in the Eccle-
siastical Court, of Deprivation *ab officio & heretico*,
with this difference, That if a Sentence in the
Ecclesiastical Court may be thought limited to
a particular Diocese, one by Parliament extends
as far as the Laws of England do. ^{Two and}
^{three Powers in one Body}

16. Admitting that a deprivation from the
Office were not known in the Ecclesiastical Court,

or had not a full effect even within a particular Diocese; yet the Circumstances plainly evince what the Parliament meant by a Deprivation from *Offices* and *Dignities*: but since as much as I contend for, is the known effect of such Deprivations by the Canons, & our Law is at least to be thought to intend as much as the common Accepration and Import of the words, according to that Law where they have been first or most used.

17. The Question is not whether Acts of the Ministry, Baptizing of the like, are valid or no, notwithstanding a Deprivation. For this relates not to the Effects, but to the Allowance or Permission of the Acts, according to Human Laws. Their suppos'd illible Character therefore is left, and yet they ought not to Preach or do other things belonging to the Character, according to their known distinction in relation to the Power of Kings, which they say is absolute in all; but the exercise of the Power may be restrain'd by the Laws of particular Countries. And as Dr. Spenlark holds, A King's most illegal Acts too have the Authority of Sovereign Power; so may he Preach against Law, with the Authority of a Minister of the Gospel, and yet be far from maintaining his own Doctrine of Non-resistance, unless he absolutely disown that Power, which God and the Law have set over him.

18. All must agree, That whether we are to reckon by Lunary or Kalendar Months, the Deprivation intended by the Act, incur'd before the Doctor began to Preach.

Upon the whole I know not what reason can be assigned for his Preaching when he did, but that the Parliament was Prorogued. I have shewn it at least not to have been so plain a Case in Law, for his Preaching, that any Lawyer who had regard to an Act of Parliament, would give such an Opinion. Heretofore when any Question came before the Judges, which might require the Explanation of the Law-makers, it us'd to be adjourn'd to the next Parliament; but this it seems is a more Learned Age.

If it be Lawful for the Doctor to Preach without the Qualifications above-mentioned, it is as Lawful to justify it; for those Reasons which will not bear the light, cannot be thought to excuse upon any Indictment, or popular Action brought; wherefore I have given this early state of the Case, with what has occur'd to me upon it, that truth may the better appear and prevail. I have purposely waived some Reflections, to which the censure this Contempt of a Parliament might provoke an English Man. Nor have I applied that charge of Schism, which some seem at last to have drawn upon themselves. This I shall only say, That

The New Nonconformist.

That some who have Preacht up *Passive Obedience* to illegal Commands, will not sit still under Legal ones, when they thwart their interest or Humours. And though their Doctrine has been sufficiently baffled; yet since Men vary in School-distinctions may make Disputes endless, nothing but their own Contradictions in Words or Practice, is likely to put them to silence.

Short Reflections, &c.

Here I should have ended the Reader's trouble upon this occasion, had I not met with another Face of the Controversie, in a sham *Imprimatur*, May 12. 1688. to a Sermon preach'd Feb. 2. 1688. by Shadrach Cook, whose Name is to serve as an *Emblem* of his Party, who are to be thought to have gone through the *Fiery Furnace*: And if they expect another Person to appear to them in the midst of the Flames, 'tis doubtless the *late King*; their Expectations from him shew the vanity of the *Motto* which this *Shadrach* has assumed to himself. *Qui natus sum a serpentis ova* *et agra deo factus sum* I ever told him. *He* said over his fist in his 3d shot ribbon, *What do you think of me?* I said *I don't understand you*. *Rebam*.

Quemque fortis videt, misericordia regat in eum.
"Call not him wretched, who you find is brave."

Were there the like use of *Injunctions* now, as when Mr. Rose and Mr. Baxter were presid'd, called for the hidden meaning of their Words, Mr. Cook's choice and sense of his Text, would be look'd on as an Evidence that, according to him, they who come not up to his fancied Fortitude, while he is back'd and encourag'd with Contributions, are shamed of Christ, and of His Words: or, to use Mr. Cook's Expressions, are guilty of the basest Imposture, the most contumacious Hypocrisie. Nor will I dispute this point with him, in relation to them who swear Allegiance to this King and Queen, and yet believe that they still owe Allegiance to the late King. Should his Forces in Ireland be totally routed, all hopes of Assistance from France lost, and as a natural consequence of these, his Party here dwindle away, and Mr. Cooke be dismiss'd from his Chairmanship, then Shadrach might be thought to be called to his Eternity; and should he do as some of his Brethren, he might plead in excuse of his Foulty, That Miracles are o'er; and nothing less than an Extraordinary blessing of the Divine Spirit could carry him through such an extreme hardship and difficulty, and make him maintain a close and steady adhesion to an honest Cause, which his Publisher, as a new distinctive Note, calls the Old Church of England, opposite

His Text,
Mark 8. 38.
Sermon, p. 6.

Sermon, p. 12.

Ibid. p. 16.

Publisher, p. 2. to this Adulterous and Sinful Generation. Should he withdraw his Fealty and Allegiance from God, and set up a profest Hostility and Rebellion against him, in deserting, or any wise forsaking or denying his Old Church of England, what could be said but that Shadrach of himself is frail, without extraordinary Assistance and Support from one to rise to him in the midst of the Fiery Trial.

I would by no means bring an Accusation from Innuendoes, but Mr. Cook's Sermon, by such a Man as his Bigotted Publisher at least, may be taken for a dreadful denouncing of God's Judgment against the New Church of Englandmen, that is, they who are not for a Protestant Church with a Popish Head.

This may shew the danger of their preaching who have not taken the Oath of Allegiance to our King and Queen, without which, what they talk of Fealty and Allegiance, Hostility and Rebellion, will be liable to such Constructions, especially by such Enthusiasts as his Publisher, who thinks himself more than ordinarily inspired, because he so luckily occasions the broaching this Sermon, an Allusion certainly taken from the Barrel dedicated to the Pious Memory of this Discourse, which had perhaps otherwise been crowded with its lazy Companions to a perpetual Silence.

Vid. Pref.

Vid. Pref.

All

All the rest, it seems, are *lazy Companions* for the Rats and Mice, fit to be crowded so perpetual silence, among Lumber and waste Paper. But this Publisher, whose Style is so like his Preacher's, that he shews himself not to have been an unprofitable Hearer, would have Two material Points believed without disputing them:

1. That the Archbisshop of Canterbury's Chaplains licensed this Sermon, after the Second of February 16⁵². which if he did not, 'tis a base Cheat upon the World; an Art to misguide the Unthinking: and if Mr. Cooke were privy to this, he would deservedly bring a Suspicion upon the Grounds of his *Nonconformity*. But if the Chaplain did license this after the Second of Februry, 16⁵³. Here is an Act flowing from the Jurisdiction given the Archbisshop, by a Statute Law, exercised after the Archbisshop had been deprived of his Office, or Offices, *Dignities* and *Promotions Ecclesiastical*; and if, according to the Canonists, *Vid. sup. p. 20.* Office relates more particularly to the Order; yet the *Dignity* and *Promotion* take in the Jurisdiction given by any Civil Law, as the Office does, whatever Jurisdiction may be thought to be annexed to it by God's Law.

2. He will have it, that Mr. Cooke, has a *legal Claim to the Pulpit at Islington*, which he is *Publisher* *built to say from the Authority he has to it*, and

compares his Case to that of the *London Rector*; so that he goes not upon his supposed Authority to preach the Gospel, notwithstanding the Deprivation; but denies the *Deprivation* it self, and urges a Title in Law to that particular Pulpit, which perhaps Dr. Cave may dispute with him: however this sets aside all nice Disputes about the import of the Words, *Offices, Dignities, Benefices,* and *Promotions*, being in effect a denying the Authority of the Law it self. The *Church-Warden's* denying the use of the Pulpit to one deprived by the Statute, he calls an Act from a ^{Publisher p. 2.} single *Lay-Authority*; the Statute, it seems, is of no Authority. Certain it is, that these Men by pretending to a Licence since the Sermon was preacht, and to a Legal Title in Mr. Cooke to the Pulpit at *Islington*, would be thought among their *Party*, to contest the Authority of the Law, at least the *London Rector* does, who has brought his Action against the *Church-Warden* for shutting the Church Door against him.

I appeal to all Mankind, whether they deserve any Countenance in a Government, who openly deny the very Foundation upon which it stands; and if their Faction could prevail in the Elections for the ensuing Parliament, it would soon appear what favour they deserve of *King William*.

They

They who are sensible of this, and therefore would keep them under, must be thought against the *Church of England*, as if only the few *Nonconformists* make the Church, as *Athanasius* was thought to do in ancient times : Or because the *Archbishop of Canterbury* holds off, the *Old Church of England* cannot remain, at least in the *Province of York*. But why cannot this King be as immediate an Head of the *Church of England* in the vacancy of the *See of Canterbury*, as his Predecessors used to be ?

Sure I am, whoever will say that the *See of Canterbury*, and the *Rectories of New-noncons* are still full ; if they durst, would say that the Throne is still full of *King James*.

F I N I S.
